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March 20, 1980

Mr. Robert B. Hansen
Attorney General, State of Utah
State Capital Building
Salt Lake City, Utah 84114

RE: Request for opinion as to authority of State Enginner vs. Department of Oil, Gas and Mining

Dear Bob:

Please be advised that I represent a group of farmers from the Escalante Valley in Iron County, Utah. The water used for irrigation comes primarly through the use of underground water regulated through the Utah State Engineer's Office. In the foothills adjacent to the farming area is located a silver mine which requires de-watering to expose the ore for subsequent processing. The mining is currently being done by Ranchers Exploration and Development Corporation. Ranchers is removing the water from the mining operation by underground wells even through Ranchers owns minimal water rights in the Escalante Valley area.

The Division of Oil, Gas and Mining has recently granted approval to Ranchers to conduct a pilot program for a three month period of time during which Ranchers will pump approximately 11,000 gallons per minute. Ranchers proposes to increase the pumping during its Phase I, II and III operation which will basically cover a 50 month period of time. During Phase III, Ranchers will be pumping 40,500 gallons per minute, which is of course a substantial amount of water. My clients take the position that such de-watering will substantially lower the water table and will thus increase utility costs to raise the water and some existing wells will need to be deepened to reach the water.

At the hearing before the Division of Oil, Gas and Mining, Mr. Dee Hanson, the State Enginner testified as to the role of his agency concerning this operation. Mr. Hanson was rather candid in admitting that he did not know of any existing authority whereby the State Enginner's Office could prohibit pumping of underground water to de-water a mine, even though it is the position of my clients that the water table will be substantially effected and lowered. At the same hearing, the Division of Oil, Gas and Mining was likewise candid in admitting that it was not sure whether or

not it had control over underground water removed as part ~~as~~ of a mining operation. Utah Code Annotated 40-8-12 seems to provide coverage in this area, but since the law is new and has not been interpreted, the Division of Oil, Gas and Mining was reluctant to rely on the authority granted by that statute.

The purpose of providing the above information is to therefore request a formal opinion as to the following issues:

1. Does the de-watering of a mine and subsequent control fall within the jurisdiction of the State Enginner's Office or with the Division of Oil, Gas and Mining?

2. Assuming that one or both state agencies have control, what is the obligation of that particular agency to monitor the water table of existing wells within the area to be affected, and who should bear the costs of the same?

3. Is the water removed from the mine being put to "beneficial use" as defined by Utah? If so, should the mining company be required to acquire the ownership of the water being removed from the mine in much the same fashion as a farmer who pumps it for irrigation purposes (Ranchers engineering study admits that during Phase III, 2,700 acre feet of water will be lost to evaporation, or about 4 percent of the estimated average consumption of use (1969-1977) due to existing agricultural of about 70,000 acre-feet/year)?

4. What redress do the farmers have whose wells may be affected by the de-watering process?

At the hearing for the Division of Oil, Gas and Mining there was somewhat of a consensus of opinion that your office would be asked by the Division of Oil, Gas and Mining to render an opinion as to the issues raised by this letter. Since I am unaware that any such request has been made, we would respectfully request an opinion from your office concerning this matter at your earliest convenience.

Thank you for your help on this and other matters.

Respectfully submitted,

Hans Q. Chamberlain

HANS Q. CHAMBERLAIN

HQC/jn

cc: Division of Oil, Gas and Mining
Mr. Dee Hanson, State Engineer

An Exhibit prepared by local farmers before the Board of Oil, Gas and Mining Department of Natural Resources in and for the State Of Utah hearing in the matter of protest to final approval of the Notice of Intent to Mine, Ranchers Exploration and Development Corporations Escalante Silver Mine, Sec. 2, T 36 S. R. 17 W., SLBM, Iron County, Utah.

The Escalante Valley is located in the southwest corner of Utah about 40 miles west of Cedar City and 40 miles north of St. George. The economy of this area has been built around agriculture since its early settlement with the main development of the underground water usage in the late 1940's and early 1950's. There is approximately 25,000 acres under cultivation with water from the underground basin, and an additional two to three thousand acres being irrigated from runoff waters from the Enterprise Reservoirs, Holt Canyon, New Castle Reservoir, and Pinto Creek.

The Escalante Valley is one of the most fertile and productive farming areas in the state, supporting a livelihood for approximately 150 farmers. The primary revenue crops are hay, grain, potatoes, and livestock. The market for these crops include the western states of Utah, Nevada, Arizona, and California. Sales of these crops are in the multi-million dollar range. The Farm Bureau estimates the total agricultural impact on a local economy to be 4 times the gross production of that area.

The limiting factor on increasing irrigation acreage and production has been the limited availability of water. The water rights of the area were open to development until approximately 1950, at which time additional water allocations limited to acres and acre feet were closed. The closure of further water allocations and water rights has caused those existing rights to increase tremendously in value to such an extent that water rights are bought and sold independent of land. This has had the effect of making the land without water rights of little value. The reason

for the closing of allocations was that the consumptive use by the farmers exceeded the natural recharge, lowering the water table at an approximate rate of 2 feet per year.

Each farmer in the area has his own independent irrigation system, usually pumping directly into a pressure system on his farm. As the water table has dropped, the farmers have gone to more efficient methods of water application. At the present time, it is estimated that 80 - 90 % of the farms are irrigated by sprinkler systems. The individual nature of each irrigation system makes it impossible for the irrigators to utilize the surface water efficiently without duplicating a water system and pumping plant already in existence.

We as farmers of this valley feel that we are putting this precious resource to very beneficial use as we lower the water table in the process of crop production. We firmly believe that to allow any waste of this resource cannot be justified. (The continual usage of the underground supply by the farmers will eventually expose the mineral resource without wasting the water supply.)

It is our opinion that the law allowing mining operations to dewater to gain access to ore does not apply to our specific situation. Ordinarily, mining operations are located in mountainous areas high above the fertile farming and their dewatering procedures often suppliments the agricultural areas below. Our situation is unique in the fact that the proposed mining operation is on the valley floor and does not suppliment or compliment the

agricultural neighborhood but rather is a detriment to their continued existence.

Ranchers Exploration and Development is proposing to dewater over an ten year period. a mine that is located one mile west of the central farming area. Estimates vary as to the amount of dewatering required sufficient to be able to mine the ore. Ranchers propose in Phase III of their schedule to pump 40,500 gallons per minute (9 wells @ 4,500 GPM ea.). This converts to 65, 315 acre feet pumped on an annual basis. Putting this in perspective, the total acre feet pumped in the entire valley by the farmers on their 25,000 acres averages 80,000 acre feet annually. (1979 --77,448.733) We feel as dependent on water as the farmers and local residents are, that any decline in the water table created by Ranchers will have serious economic consequences.

There are numerous economic consequences to an unwarranted depletion of our underground water. Some would be:

a. Crop losses sufferred mid-season due to the rapid decline in the water table caused by the dewatering process.
b. Costs to lower and or drill deeper wells to compensate for the dropping table for agricultural and domestic wells.
c. Increased pumping costs involved in lifting the underground water from an increasing depth.

These consequences are relatively short term. We must also address ourselves to the long-term consequences to our farming community from Ranchers proposed program.

Many of the farmers now are 2nd and 3rd generation farmers. We must also attempt to envision what kind of circumstances we will leave our 4th and 5th generation farmers after Ranchers Exploration and Development is through with their 10 yr. program and have left the area.

The proposal by the mining company to recharge the water dewatered from the mine area would use existing flood channels and dikes that have been built strictly for flood control and the prevention of runoff from spilling onto the surrounding farmland. The channels and dikes have been reasonably effective in flood control although history points out that several times in recent years they have not been adequate and serious flooding has occurred. If the mine company discharges their water into the flood channels as they propose, and we get a period of heavy runoff as we so frequently do in the spring, the resulting situation would be disastrous flooding. Ranchers engineers claim that the proposed recharge area will sufficiently absorb the continuous supply of water and not spill over the dikes and into the North Canal. It is very important to note that any water into the North Canal is rapidly evacuated from the area and offers very little or no recharge. It is our firm opinion as local residents and observants of past runoff history, that their proposal is not completely realistic and their water will quickly overrun the recharge area to waste. The credibility of their engineering ~~ability~~ studies can be questioned as we compare this proposal to a similar proposal

made by Anglo-American ~~Ranchers~~ when they attempted to dewater the mine in 1969. At that time, their engineers suggested that the water may not even reach the end of the North Canal and would likely recharge itself before it reached the end. It was no surprise to the local residents to see the water at the end of the canal discharging into the wasteland only 24 hours after 2 pumps were started.

We as farmers do not oppose the mining operation in general, just the method by which they plan to dewater. The mining operation could be a healthy boost to the local economy and could provide gainful employment for many local residents.

We must, however, keep in mind that our water is too valuable and too precious of a resource to be wasted in any manner or quantity. We would suggest that the mining officials again reevaluate alternative methods of mining the silver ore so that the mine and the farming operations might be compatible.

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS, AND MINING
1588 West North Temple
Salt Lake City, Utah 84116
(801) 533-5771

March 17, 1980

Mr. Mark R. Welch
Chief Engineer
Rancher's Exploration &
Development Corporation
Box 6217
Albuquerque, Nex Mexico 87107

Dear Mr. Welch:

Enclosed for your information is an excerpt from the first publication listed on the attached sheet. This information is provided pursuant to the note made on MR Form 2 under "Revegetation."

I would further suggest obtaining copies of the publications listed on the attached sheets for more information on revegetation. Should you have any questions concerning revegetation please do not hesitate to call me.

Sincerely,

MARY ANN WRIGHT
RECLAMATION BIOLOGIST

MAW/te

Enclosures

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS, AND MINING
1588 West North Temple
Salt Lake City, Utah 84116
(801) 533-5771

February 14, 1980

Mr. James M. Rosel
Assistant Vice President and
Assistant Secretary
Ranchers Exploration and Development Corp.
Box 6217, 1776 Montano Road, N.W.
Albuquerque, New Mexico 87197

Re: Final Approval
Escalante Silver Mine
ACT/021/004

Dear Mr. Rosel:

The Board today, at its Executive Meeting, fully executed the Mined Lands Reclamation Contract submitted for the Escalante Silver Mine.

Now that all requirements of the Utah Mined Land Reclamation Act have been fulfilled, the Division hereby issues final approval to Ranchers Exploration and Development for the above mentioned Mine. Mining operations may now lawfully commence.

Please be reminded of Rule 40-8-15 of the Act which requires that the Division be notified within 30 days of commencement of operations. Rule 40-8-15 also requires that an annual Operations and Progress Report be filed for each active operation at the end of each calendar year.

Should you have any further questions on this matter, please do not hesitate to contact this Division.

Sincerely,

Ronald W. Daniels

RONALD W. DANIELS
COORDINATOR OF MINED
LAND DEVELOPMENT

RWD/sp